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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

ANDERSON, CATHARINE L

ART UNIT	PAPER NUMBER
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3761

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/619,892	Applicant(s) LEMAY ET AL.	
	Examiner Lynne Anderson	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 March 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-20,25,31,34,37,44 and 46-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-20,25,31,34,37,44 and 46-51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12 March 2009 has been entered.

Response to Arguments

2. Applicant's arguments with respect to claims 11-20, 25, 31, 34, 37, 44, and 46-51 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 11, 34, 44, 46-48, and 51 are rejected under 35 U.S.C. 102(b) as being anticipated by Paul et al. (5,158,535).

5. Paul discloses a tampon applicator assembly, as shown in figure 1, comprising a barrel 14 having an insertion tip area that tapers to an insertion tip 22. The barrel 14 further comprises a tapered main section 18 and a finger grip 20, as shown in figure 2, the tapered main section 18 tapering from the finger grip to the insertion tip area, as

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disclosed in column 4, lines 3-4, which results in the tapered main section having its maximum outer diameter closer to the finger grip than the insertion end. The finger grip region 20 has a shoulder region where it meets the tapered main section 18, as shown but not numbered in figure 1. The barrel 14 decreases in diameter from the shoulder region to the finger grip 20 so that the finger grip 20 has a smaller diameter than the tapered main section 18, as shown in figure 2. A flared region 34 is located opposite the shoulder region and has a larger outer diameter than the gripping region, as shown in figure 2. The applicator further comprises a plunger 16 and a pledget 12, as shown in figure 2. The plunger 16 has a main body that is flared at each end 44 and 46 such that the outer diameter of each end 44 and 46 is greater than the diameter of the main body, as shown in figure 7. The diameter of the main body of the plunger 16 is less than the diameter of the gripping region 20, as shown in figure 7.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 12-20, 25, 31, 37, and 49-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Paul et al. (5,158,535).

8. With respect to claims 12-13, Paul discloses all aspects of the claimed invention with the exception of the distance the maximum outer diameter is located from the insertion tip. Paul shows in figure 1 the maximum outer diameter being located

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adjacent the finger grip, as discloses in column 3, lines 41-42, the barrel 14 has a length of 2 to 3 inches. It would have been obvious to one of ordinary skill in the art at the time of invention to make the maximum outer diameter of the barrel of Paul be 60%-75% of the overall length from the insertion tip to provide the predictable result of leaving the remaining 25%-40% of the length for the finger grip region to allow a suitable area for a user to grip.

1. With respect to claims 14-15 and 37, Paul discloses all aspects of the claimed invention with the exception of the taper ratio being about 1.08 to about 1.13. Paul discloses the main section being tapered, as described in column 4, lines 3-4, but remains silent as to the degree of the taper. The taper of the barrel of Paul is shown in figure 1 as being very gradual. It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the applicator barrel of Paul with a taper ratio of about 1.08 to about 1.13 to provide a gradual taper to the barrel.

2. With respect to claims 17-18 and 31, Paul discloses all aspects of the claimed invention with the exception of the insertion tip having a taper ratio of between about 0.7 and 0.9. It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the insertion tip area of Paul with a taper ratio between about 0.7 and 0.9, in order to provide a taper having an angle of about 90°.

9. With respect to claims 19-20, Paul discloses all aspects of the claimed invention with the exception of the petal length-to-width ratio being over about 2. Paul discloses the petals having a length greater than their width, as shown in figure 1, but remains silent as to the exact dimensions of the petals. It would therefore be obvious to one of

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ordinary skill in the art at the time of invention to provide the petals of Paul with a length-to-width ratio of greater than about 2, in order that the petals having a length sufficient to provide the insertion end area with a taper having an angle of about 90°.

10. With respect to claims 25 and 49-50, Paul discloses all aspects of the claimed invention with the exception of the shoulder and flared regions being 10-30% larger than the diameter of the gripping region. Paul discloses a desire for the gripping region to be smaller in diameter than the shoulder region and the flared region. It would have been obvious to one of ordinary skill in the art at the time of invention to make the maximum diameter of the shoulder and flared regions 10-30% larger than the outer diameter of the finger grip, since it has been held that where the general conditions of the claims are disclosed in the prior art (i.e. providing a finger grip with a flared region), finding the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lynne Anderson whose telephone number is (571)272-4932. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/L. A./

Examiner, Art Unit 3761

/Tatyana Zalukaeva/

Supervisory Patent Examiner, Art Unit 3761